

THE WHITE HOUSE

WASHINGTON

May 14, 1977.

EX-100-100-1

77-42536

MEMORANDUM

TO: Admiral Stan Turner

FROM: Bob Lipshutz 

I apparently did not receive from you a copy of your memo of transmittal to the Senate Intelligence Committee of the IOB matters. Please send me a copy at your convenience.

Also, I assume that you have coordinated this with Fred Baron concerning FBI matters.

Please advise.

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EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
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16	Asst/DCI				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20	D/EE0				
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SUSPENSE 20 May 1977
Date

Remarks:

Please prepare response for DCI signature.

Our records show that copy of IOB resume did not have any letter of transmittal to SSCI.

D/Executive Secretary

16 May 77
Date

3637 (7-76)

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MEMORANDUM FOR:

The Honorable Robert Lipshutz
Counsel to the President

Executive Registry

77-4253/B

Attached are copies of the memoranda
delivered to the White House Situation
Room on 11 May regarding the IOB and
Case Act Reporting.

atl:

77-4253/1 & 2

Commander, U.S. Navy
Executive Assistant to the DCI

Date 16 May 1977

FORM 5-75 101 USE PREVIOUS EDITIONS

Executive Secretary

Original was hand carried to OGC by ER per
instructions of Karen/O/DCI.

additional ~~copy~~
distribution?

Sophie/ER

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Washington, D. C. 20505

11 MAY 1977

MEMORANDUM FOR: Honorable Robert Lipshutz
Counsel to the President

SUBJECT : Case Act Reporting

1. The Case Act (1 U.S.C. 112b), passed by the Congress in 1972, requires that the Secretary of State transmit to Congress the texts of all international agreements other than treaties to which the U.S. is a party, within 60 days of their entering into force. The Act does not define "international agreement" and the legislative history is silent as to its meaning. CIA had originally taken the position that intelligence liaison arrangements should not be considered agreements under the Act, and had instituted procedures so that neither the form nor the substance of its arrangements would be likely to be interpreted as international agreements. Nevertheless, the Department of State has come under increasing pressure from the Congress and particularly from Senator Abourezk in his capacity as Chairman of the Subcommittee on Separation of Powers of the Committee on the Judiciary to review and report intelligence arrangements. Senator Case also feels that intelligence liaison arrangements are covered by the Act. The Legal Adviser of the Department of State has interpreted the Act to require the reporting of written agreements, including intelligence liaison arrangements, meeting certain criteria as to (1) intention of the parties to be bound in international law, (2) significance, (3) specificity including objective criteria for determining enforceability, (4) necessity for two or more parties, and (5) form. Further, on 21 April 1977, Senator Case inserted into the supplemental State authorization bill an amendment requiring agencies to report agreements to the Department of State within 20 days of their entering into effect. The House is expected to accept this amendment in conference.

2. Subsequent to the Legal Adviser's determination, the Agency has negotiated with Senator Case and Chairman Zablocki of the House International Relations Committee and the Staff Directors of those Committees, and the Senate Select Committee on Intelligence, procedures whereby reportable agreements will be handled in a secure and confidential manner. These procedures would be "an appropriate injunction of secrecy" as provided in the Case Act for sensitive agreements.

3. In the Senate, the procedure would entail providing the text of any reportable intelligence agreement to Senators Sparkman and Case (and a senior staff officer), in their capacities as Chairman and Ranking Minority Member, respectively, of the Foreign Relations Committee. The agreements then would be turned over to the Senate Select Committee on Intelligence, on which Senator Case also serves, for secure retention.

4. In the House, the procedures envisaged would provide that reportable agreements would be transmitted along with other classified, non-intelligence agreements in a manner to avoid specifically identifying the intelligence agreements, as such, in any covering documentation. The text then would be made available to the Chairman of the House International Relations Committee who would undertake to inform such other Committee members as he determines necessary and appropriate. The texts would be returned to the CIA for secure storage.

5. It would appear that in enacting the Case Act, Congress gave no thought to the reportability of intelligence arrangements. At that time, there was little pressure for stringent implementation of the Act, and the Department of State accepted the Agency's position that it should make its own determination as to whether particular intelligence arrangements were reportable. This attitude has changed in subsequent years and the demands upon the Department of State to report all agreements have left little room for negotiation. Two agreements of the Defense Intelligence Agency have been reported to Congress. Short of an assertion of constitutional prerogatives by the President, the question now is not whether intelligence arrangements or other Executive agreements meeting the criteria for international agreements established by the Department of State shall be reported to the Congress, but merely the manner in which they will be reported to assure necessary secrecy. Further, the impact of the reporting requirement will be mitigated by procedures already in effect in CIA to reduce to an absolute minimum the intelligence arrangements which must be formalized as international agreements reportable under the Case Act.



STANSFIELD TURNER

Attachment

OGC:JDM:lsh

Distribution

Original - Addressee

1 - DCI

1 - DDCI

✓ 1 - ER via EX SEC

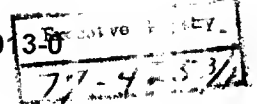
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CASE ACT REPORTING

- Case Act requires Secretary of State to transmit texts of all "international" agreements other than treaties.
- Current sense in State Department and in Congress is that this includes intelligence arrangements which meet certain detailed criteria.
- Procedures have been negotiated between CIA and principal review committees of Congress so reports of intelligence arrangements will be handled with appropriate secrecy.
 - Senate. Text given to Senators Sparkman and Case (and a senior staff officer) in capacities as Chairman and Ranking Minority Member of Foreign Relations Committee. The agreements then turned over to the SSCI for secure retention.
 - House. Agreements transmitted along with other classified non-intelligence agreements in a manner to avoid specifically identifying the intelligence agreements in any covering documentation. Text then made available to the Chairman of the House International Relations Committee who would undertake to inform such other Committee members as he determines necessary and appropriate. Texts would be returned to the CIA.
- Agency is reducing to absolute minimum the intelligence arrangements which fulfill criteria and which are reportable.
- President should approve procedures described above.



Washington, D.C. 20505

MEMORANDUM FOR: Honorable Robert Lipshutz
Counsel to the President

SUBJECT : Reports to Intelligence Oversight Board

1. On 23 June 1976, in response to a request from Chairman Inouye at Mr. Knoche's confirmation hearing, the Deputy Director agreed to make available to the Select Committee on Intelligence reports similar to those made to the Intelligence Oversight Board (IOB) or the Attorney General, in respect to Agency activities that raise questions of legality or propriety or possible violations of law. I made a similar commitment at my own confirmation hearing.

2. In an exchange of letters of 21 January and 3 March 1977, Mr. Knoche and Senator Inouye agreed to arrangements for making the requested reports. With respect to reports to the IOB, unless the Agency is instructed to the contrary by the President the Agency's Inspector General and General Counsel would inform the Committee's Staff Director in writing within a month after any report to the IOB as to the general nature of the items reported. Additional detail would be available to the Committee or its Staff Director where they might wish to pursue further any item reported. Senator Inouye's acceptance of the proposed procedures suggested two additional provisions. First, that the Director report to the Committee any order of the President not to report on a particular activity to the Committee. Second, that the Inspector General and General Counsel report to the Committee as they must to the IOB if their reports are blocked or if they are refused access to information.

3. With respect to matters reported to the Attorney General involving possible violations of law, the Agency's General Counsel would submit quarterly to the Committee's Staff Director a written statement of the number of previously reported offenses closed out during the preceding quarter by Department of Justice decisions to prosecute or not to prosecute. The statement would include a brief description of the circumstances of each case, but would not identify the subject. The statement would also indicate the number and type of possible offenses reported for the first time during the preceding quarter.

4. These procedures are designed to permit sufficient time for Executive consideration before involving the Congress, and in regard to matters reported to the Attorney General to take into consideration fairness to the individuals involved and the integrity of the Department of Justice investigations.

5. In a letter of 3 May 1977 Chairman Inouye expressed to me his concern that, in spite of the commitments made by Mr. Knoche and myself at our confirmation hearings and the understanding reached in his exchange of correspondence with Mr. Knoche completed on 3 March 1977, the Committee had not yet received any information regarding either reports to the IOB or to the Attorney General. Given the commitments made by Mr. Knoche and me at our confirmation hearings and the personal concern of Chairman Inouye that the Committee be kept adequately informed on questions of legality and propriety, any attempt to severely modify or revoke the proposed procedures seems certain to provoke a confrontation with the Committee. In any case, at least with regard to reports to the IOB, the facts probably would be disclosed to the Committee because of the serious nature of the matter or because it had or would become public.


STANSFIELD TURNER

Attachment

OGC:JDM:lsh

Distribution

Original - Addressee

1 - DCI

1 - DDCI

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REPORTS TO INTELLIGENCE OVERSIGHT BOARD

- On 12 June 1976, in response to a request from Chairman Inouye, Mr. Knoche agreed to make available to the Select Committee on Intelligence reports similar to those made to the Intelligence Oversight Board (IOB) or the Attorney General on Agency activities of questionable legality or propriety, or possible violations of law.
- Admiral Turner made a similar commitment at his confirmation hearing.
- Chairman Inouye, in a letter of 3 May, expressed concern commitments have not been met.
- Procedures proposed to and accepted by SSCI for forwarding IOB reports.
 - CIA Inspector General and General Counsel inform SSCI of general nature of items reported within 30 days.
 - Additional details available on request.
 - Either action subject to Presidential Veto.
 - DCI must report such a veto to SSCI.
 - CIA Inspector General and General Counsel report to SSCI any interference with their reports or investigations
- Procedures proposed to and accepted by SSCI for forwarding AG reports of possible violations of the law.
 - CIA General Counsel report quarterly number of possible new offenses and number of offenses closed out by DOJ decision for or against prosecution.
 - Report to include brief description of each case.
 - Subjects not named.

- Procedures keep SSCI adequately informed of legality and propriety.
- Procedures pose no disclosure problem for Agency since as a practical matter material would be so serious as to have already been reported or it would already be in the public domain.
- Procedures designed to permit sufficient time for Executive consideration before involving Congress are fair to individuals involved and preserve integrity of DOJ investigations.
- President should approve initiation of procedures.

OFFICE OF THE DIRECTOR

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Date: 10 May 1977

TO: General Counsel

FROM: EA/DCI

SUBJECT:

REMARKS: Mr. Lipshutz asked Admiral Turner for a paper which he could present to the President on:

- (1) the IOB reports to the Senate Select Committee, and
- (2) Case Act reporting of liaison relationships.

Admiral Turner asked that these be prepared for his delivery by close of business, 10 May.

He asked that the memos be brief and in the case of the IOB report, make the point that in almost all cases, the facts would have been disclosed to the Committee anyway because it was serious or had already been made public.



Commander, U.S. Navy

NOTIFICATION

EXECUTIVE REGISTRY FILE

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18	C/IPS				
19	DCI/SS				
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21	L. Lapham		X		
22	ES		X		
SUSPENSE		10 May 1977 Date			

Remarks:

The original was hand carried to GC for action.

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